
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF LENEXA, KANSAS

These Comments are filed by the City of Lenexa, Kansas ("Lenexa") in support of the comments filed by the National League of Cities ("NLC") and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, Lenexa believes that local governments can issue appropriate local franchises for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Lenexa, Kansas

Community Information

Lenexa is City of the First Class located in Johnson County, Kansas in the southwestern portion of the Kansas City metropolitan area, with a population of over 42,000. Our franchised cable providers are Time Warner and Everest Connections. Our community has negotiated cable franchises since 1971.

Current Franchises

The City's current franchise with Time Warner was granted to Time Warner's successor in interest, Telecable of Overland Park, Inc. on July 16, 1987. The franchise expires on July 15, 2007 ("Time Warner Franchise"). The Federal Cable Act provides that a cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. Time Warner has filed a timely request for renewal and as a result, we will soon begin negotiating a franchise renewal with Time Warner Cable. Lenexa also has a current franchise with Everest Connections. This franchise began on September 1, 2000 and also expires on July 15, 2007 ("Everest Franchise"). Except where specifically noted elsewhere in this Comment, the terms of the Everest Franchise are identical to the terms of the Time Warner Franchise.

Franchise Fee: The franchise requires cable operators to pay the City a franchise fee in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Service to Public Facilities and PEG Programming: The Time Warner Franchise required the cable operator to provide cable service without charge to police and fire stations, as well as public and private schools. In addition, Time Warner is obligated to provide one channel for public school district use and one channel for the joint use of all franchising authorities in the Johnson County area, with the possibility of a second channel to be provided if requested by those authorities. City, school district and cable service boundaries in the Johnson County area overlap in varying ways and Time Warner has provided PEG channels to other jurisdictions, though the City of Lenexa does not now, nor has it ever, utilized a PEG channel.

The Everest Franchise also requires the provision of one free service drop and monthly basic cable service without charge to any public facilities or schools desiring service. To avoid duplication of services, the Everest Franchise did not include specific requirements for PEG programming. Rather, the cable operator made a cash payment to the City to be utilized as prepayment toward required support of the City's cable communications efforts. That payment was later applied to franchise fees due from the cable operator, after the City opted not to utilize those funds for PEG.

Emergency Alert: The City's franchise requires the franchisee to permit the City to transmit, with the assistance of the franchisee's authorized personnel, information over the system advising subscribers regarding the nature and extent of any civil disaster or other emergency as may be required to protect the public health, safety and welfare. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Customer Service: The Lenexa franchise contains customer service obligations, by which the City is able to help ensure that the cable operator is treating its residents in accordance with federal standards and the terms it agreed to in its franchise. Specifically, the franchise requires that cable providers limit system failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than 24 hours after notice has been given, except where prevented by an act of God or otherwise prevented by circumstances over which the provider has no control. Providers are required to maintain an office near the City, which shall be available during normal business hours Monday through Friday, as well as a mechanism for receiving requests for repairs, adjustments or other services at other times.

Build Out: While the City's original 1971 cable franchise did not, by its terms, contain a specific timeframe for Time Warner's successor to build out its system, the 1987 Franchise recites that Time Warner's successor did "in a timely manner commence and complete construction of the cable television system, did operate said system continuously to the present date, and did regularly and periodically update said cable system's capability and channel capacity and did thereby comply in all material respects with the requirements of the original franchise." The Everest Franchise required that construction of the system be completed no later than 60 months after the passage of the franchise ordinance.

The franchise requires that the cable operator currently provide service throughout the community, except to one or more multiple dwelling units under common ownership, control or management, where service to such facilities does not use the public right-of-way. The franchise does permit providers to charge actual cost of materials and labor plus 10 percent to serve areas where extraordinary installation procedures are required to establish service. In addition, providers are required to extend service to areas later annexed into the City according to the same rules and regulations.

Insurance and Bonding: The Lenexa franchise contains the following insurance and bonding requirements: That each provider shall provide insurance protecting City and its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever for loss or damage from personal injury, death, or property damage occasioned by the operation of the cable system, or alleged to so have been caused or occurred, for an amount not less than \$500,000 for the personal injury or death to any one person and \$5,000,000 for personal injury or death of two or more persons in any one occurrence, and \$300,000 for damages to property resulting from any one occurrence. In addition, providers are required, at all times during the term of the franchise, to maintain a corporate surety bond in a form approved by the City Attorney, in an amount not less than \$50,000 renewable annually, and conditioned upon provider's faithful performance of the provisions, terms, and conditions of the franchise.

Right-of-Way Management: The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. In addition, the cable provider is required to obtain a permit from the Public Works Department, pursuant to the City's Right-of-Way Management provisions, adopted as Ordinance No. 4236, codified at Article 4-61 of the Lenexa City Code, and amendments thereto, before it may access the public rights of way. The City's Right-of-Way Management provisions require annual registration of right-of-way occupants, and payment of a permit application and street cut or excavation fee.

Enforcement: The franchise agreement specifically reserves the right of the City to exercise its governmental powers and also provides the additional and separate ability to revoke a cable franchise for noncompliance with certain terms thereof. As such, the City is able to ensure that the cable operator is abiding by its agreement.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government, including a requirement that prior written notice and a public hearing on alleged violations of the franchise before any declaration of forfeiture and the right to appeal the denial of a franchise in state or federal court.

Competitive Cable Systems

As noted above, Lenexa granted a competitive franchise to Everest Connections, a cable overbuilder, in 2000 and that provider is still providing service in our community today. The terms of that franchise are virtually identical to the terms of the incumbent, Time Warner Cable's franchise.

In addition, Lenexa was approached by a Southwestern Bell Telephone, LP, ("SBC") in the summer of 2005 about SBC's desire to deploy Project Lightspeed, which includes video, in the city. SBC presented a Public Benefit Agreement to provide for the deployment, which included an offer to pay a fee to the City, but no other "franchise-like" commitments. The City repeatedly offered its standard video franchise to SBC, but SBC refused, although SBC did negotiate with the City for several months on the terms of an alternate Agreement. The City was not able to agree to the terms of such an Agreement because SBC was unwilling to agree to commitments on important matters such as build out, customer service, emergency broadcast and service to public buildings. Ultimately, on December 20, 2005, Lenexa passed an ordinance granting SBC the City's standard video franchise. The franchise was subject to SBC's acceptance to the terms thereof within 30 days after publication, or by January 27, 2006. SBC did not file an acceptance to the terms of the video franchise, and as such, it became null and void on January 27, 2006.

The City of Lenexa has never denied any provider the opportunity to serve in our community. Further, the City has mechanisms in place to offer the same or a comparable franchise to a competitor upon request and has demonstrated its willingness to act upon such requests promptly and without delay.

Conclusions

The local cable franchising process functions well in Lenexa, Kansas. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Lenexa, Kansas, therefore, respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

CITY OF LENEXA, KANSAS



By: Eric Wade
City Administrator
12350 West 87th Street Parkway
Lenexa, Kansas 66215
913/477-7500

cc: National League of Cities, leanza@nlc.org
NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov